

## DEROGATION LETTER

### IN RESPECT OF INTERIM ORDER ISSUED PURSUANT TO SECTION 81(2) ENTERPRISE ACT 2002 COMPLETED ACQUISITION

**Consent under section 81(2B) of the Enterprise Act 2002 to certain actions for the purposes of the Interim Order made by the Competition and Markets Authority ('CMA') on 13 May 2020.**

**Completed acquisition by FNZ (Australia) Bidco Pty Limited of GBST Holdings Limited (the 'Acquisition')**

We refer to your email of 2 September 2020 requesting that the CMA consents to derogations to the Interim Order of 13 May 2020 (the '**Interim Order**'). The terms defined in the Interim Order have the same meaning in this letter.

Under the Interim Order, save for written consent by the CMA, Kiwi Holdco CayCo, Ltd (**KHC**), **FNZ (Australia)** Bidco Pty Ltd (**FNZ (Australia)**), FNZ (UK) Ltd (**FNZ UK**) (together **FNZ**) and GBST Holdings Limited (**GBST**) are required to hold separate the FNZ business from the GBST business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for a derogation from the Interim Order, based on the information received from you and in the particular circumstances of this case, FNZ may carry out the following actions, in respect of the specific paragraphs:

#### **1. - Paragraphs 5(a) and (l) of the Interim Order**

##### *a. Preparation of Australian tax returns*

The CMA understands that following completion, and pursuant to a derogation granted by the CMA on 29 November 2019, GBST was consolidated into FNZ's Australian tax consolidated group ("**Consolidated Tax Group**"). FNZ has therefore assumed responsibility for making tax returns to the Australian Tax Office ("**ATO**") on behalf of GBST. To complete mandatory tax returns for the Consolidated Tax Group, it will be necessary for GBST to send strictly necessary financial information, as defined in Annex 1 ("**Strictly Necessary Financial Information**"), to

FNZ's tax team so that complete and accurate tax returns may be prepared and submitted.

FNZ requests that:

- (a) relevant GBST employees provide all **Strictly Necessary Financial Information** required for the purpose of FNZ preparing and submitting complete and accurate tax returns to the ATO on behalf of the Consolidated Tax Group to the following ("**The Authorised Recipients**"):
  - a. [X]
  - b. [X]
  - c. [X]
  - d. [X]
  - e. [X]
- (b) tax returns for the Consolidated Tax Group to be submitted by FNZ ([X]) to the ATO.

The CMA consents to this derogation request subject to the following conditions:

- (a) only **The Authorised Recipients** (as listed above) are authorised to receive and see information pursuant to this derogation;
- (b) **The Authorised Recipients** will enter into NDAs agreed between GBST and FNZ in a form approved by the CMA, containing appropriate safeguards on the use, treatment and storage of confidential financial information prior to receiving any **Strictly Necessary Financial Information** pursuant to the derogation;
- (c) the **Strictly Necessary Financial Information** to be provided to FNZ in the context of this derogation request is confidential and cannot be shared more widely within FNZ;
- (d) the **Strictly Necessary Financial Information** may not be used for any purpose other than the preparation and submission of tax returns for the Consolidated Tax Group;
- (e) FNZ will adopt physical and IT firewalls to prevent unauthorised individuals from accessing the **Strictly Necessary Financial Information**.
  - b. *Preliminary analysis of the availability of group tax relief in the context of Singaporean tax obligations*

The CMA understands that FNZ has tax obligations in all the jurisdictions in which it operates. The CMA further understands that in [X], where GBST operates, [X], tax relief can be claimed. In order to determine whether such group tax relief in [X] is available (and which would otherwise be lost), it is necessary for certain basic information about the financial position of [X] to be disclosed to FNZ; [X]. The disclosure of this information will not lead to any joint action in respect of a [X] tax filing – it is required simply for FNZ to determine whether or not such relief is available. This is necessary to ensure that FNZ has a complete and accurate understanding of its international tax obligations so that it can comply with its statutory obligations (including those relating to financial reporting and tax) in all the jurisdictions where it operates.

FNZ requests that:

- (a) relevant GBST employees inform the following (“**The Authorised Recipients 2**”) whether or not [X]:
  - a. [X]
  - b. [X]
  - c. [X] and
  - d. [X]

The CMA consents to this derogation request subject to the following conditions:

- (a) to the extent necessary, **The Authorised Recipients 2** who receive information pursuant to the derogation will agree not to disclose this information save unless required for the purpose for which the derogation was granted (or by other applicable law);
- (b) the NDAs executed in connection with the Preparation of Australian tax returns derogation (above) will include a provision reflecting this obligation;
- (c) only **The Authorised Recipients 2** (as listed above) are authorised to receive and see information pursuant to this derogation;
- (d) the information to be provided to FNZ in the context of this derogation is confidential and cannot be shared more widely within FNZ;
- (e) the information to be provided to FNZ in the context of this derogation may not be used for any purpose other than the preliminary analysis of the availability of group tax relief in the context of [X] tax obligations; and

- (f) FNZ will adopt physical and IT firewalls to prevent unauthorised individuals from accessing the information to be provided to FNZ in the context of this derogation.

**Yours sincerely,**

**Martin Coleman, Panel Chair**

■ **2 September 2020**

## Annex 1

**“Strictly Necessary Financial Information”** is to be provided in final or final draft form having been subject to a final review by GBST’s external tax advisors and comprises:

I. [X].

II. [X]

III. [X]

a) [X]

b) [X]

c) [X]

d) [X]

[X].

IV. [X])

V. [X]

VI. [X]

[X]

VII. [X]

VIII. [X]

IX. [X]

a) [X]

b) [X]

c) [X]

d) [X]

e) [X]

f) [X]

g) [X].